

**THE CZECH REPUBLIC NATIONAL INFORMATION (UNODC/UNCAC)  
FOR THE 6<sup>TH</sup> INTERSESSIONAL MEETING OF THE WORKING GROUP  
ON PREVENTION TO BE HELD ON 31 AUGUST – 2 SEPTEMBER 2015**

**I - Information requested from States parties and signatories in relation to integrity in public procurement processes and transparency and accountability in the management of public finances (arts. 9 and 10).**

**1. Measures/steps taken to implement this provision of the Convention**

- In the Czech Republic, the Act No. 137/2006 Coll., **on Public Contracts** has been adopted in 2006, and until to the beginning of 2015 it has undergone 19 amendments (the English version of this Act after 8 amendments is available at [http://www.portal-vz.cz/getmedia/50657500-3743-426a-8463-e3b46830ae04/ZVZ\\_english](http://www.portal-vz.cz/getmedia/50657500-3743-426a-8463-e3b46830ae04/ZVZ_english)). The Act provides for procedures for the award of public contracts, design contest, supervision over compliance with this Act, conditions for the maintenance and purpose of the list of approved economic operators and of the system of certified economic operators.
- **Prevention of Corrupt Practices programme** - The Security Policy Department of the Ministry of the Interior of the Czech Republic has been in charge of the Prevention of Corrupt Practices grant programme as of 2009 and since then it has allocated grants in the total amount of CZK 16.757.346. The ratio of funds allocated to the total amount of grants requested by successful applicants is 70.1 %. The ratio of funds allocated to the total amount of grants requested (including unsuccessful applications) is 62.5 %. In November 2014, a meeting of the Grant Committee for the provision of grants for NGOs was held to decide upon the allocation of money within this grant programme in the year 2015. The committee has been set up in compliance with the Security Policy Department Director's Instruction and the committee is comprised of the representatives from the Ministry of the Interior, the Office of the Government of the Czech Republic, the Unit for Combating Corruption and the Financial Crime and Open Society Fund Prague. All the submitted applications complied with the formal requirements and were found eligible for consideration of the committee. Nine applications from nine organizations were submitted. Both the requested as well as at the end granted sums can be seen in the table below. **Total funds allocated for 2015: CZK 3.500.000.**

<b>LIST OF PROVIDED GRANTS</b>					
	<b>Applicant</b>	<b>Name of the Project</b>	<b>Requested (in CZK)</b>	<b>Requested % from the Total Costs</b>	<b>Granted Amount (in CZK)</b>
<b>1.</b>	Frank Bold Society, o.s.	Citizens support in the anticorruption	779.380	70,00	779.380

		activities 2.0 - New Challenges			
2.	Oživení, o.s.	Anticorruption ambulance - legal counselling	1.160.800	70,00	1.020.620
3.	Transparency International - Česká republika, o.p.s.	Lighthouse in a sea of corruption in 2015	1.710.000	80,00	1.100.000
4.	Liga lidských práv	Fair police	458.549	70,00	0
5.	Krajské protikorupční pracoviště, o.p.s.	Together effectively against corruption	1.211.376	65,80	600.000
6.	Otevřená společnost, o.p.s.	Using information against corruption	1.219.156	70,00	0
7.	W.B., o.s.	Building new information channels and providing counselling for whistleblowers	214.596	70,00	0
8.	Místní akční skupina Mladoboleslavský venkov, o.s.	Countryside without corruption	952.375	100,00	0
9.	Centrum pro ekologii, média a demokracii	Atlas of corruption	1.091.200	100,00	0

- A close cooperation exists between the Financial Analytical Unit of the Ministry of Finance (FAU) and the Unit for Combating Corruption and Financial Crime of the Police of the Czech Republic. The cooperation between these authorities is also undertaken in each stage of criminal proceedings between the Police investigators and the FAU analyst operators.
- The **Police** of the Czech Republic is regularly evaluated within the mutual evaluation of anti-money laundering and terrorist financing measures by the Council of Europe Moneyval Committee.
- AMON, the **International Police Network of Experts on Money Laundering**, was established in 2011 in the Czech Republic. This network operates under the Europol and gathers good practices in specific criminal cases of money laundering and informs about ML guidance, methodology and new findings on the Europol EPE platform. The Police of the Czech Republic is also integrated within the police

operational networks CARIN and ARO which serve for search and seizure of assets and also for further detection of money laundering. The investigation works on the basis of a network of designated specialists who on a national level ensure the financial investigation leading to an asset seizure or to further money laundering investigation works. These specialists are situated at each Police unit dedicated to investigate economical and property crimes.

- In cases of legalization of crime proceeds, the investigators of the Unit for Combating Corruption and Financial Crime gain, within the framework of mutual legal assistance, valuable information and evidence about offenders, bank accounts, financial flows and obtained assets. This evidence helps to accuse offenders.
- The **Office for the Protection of Competition** exists in the Czech Republic, the task of which is to ensure that market behavior is in compliance with competition rules and benefits the consumers. It also supervises the procedures of awarding public procurement and concessions, thus ensuring better transparency in public spending. The Office for the Protection of Competition reviews the actions of procurement officials (contracting authorities), exercises supervision over procurement officials (contracting authorities), and participates in the creation and amendment of public procurement and concession legislation. The Consolidated Act No. 143/2001 Coll., on the Protection of Competition has been in practice since 2001, with many amendments since then (see the English version after some of the amendments at [http://unctad.org/Sections/ditc\\_ccpb/docs/ditc\\_ccpb\\_nel\\_CzechRepublic\\_en.pdf](http://unctad.org/Sections/ditc_ccpb/docs/ditc_ccpb_nel_CzechRepublic_en.pdf)).
- The Office for the Protection of Competition is part of the Public Procurement Network (PPN), established at the initiative of the Danish Competition Authority in 2003 following very positive results from a three-year pilot project. The scheme has now been made permanent. Reflecting this success, the number of participants has risen to include all 25 EU Members, all EU candidate countries, as well as the EEA countries and Switzerland. The PPN has two primary functions: to provide practical assistance to individual companies facing barriers in public procurement procedures abroad, and to enable countries to exchange experience and best practice in public procurement.

## **2. Actions required to strengthen or to improve the measures described above**

- The purpose of the public procurement supervision review is to use the public funds economically and in accordance with the competition rules. The Office for the Protection of Competition has exercised its supervision of this area since 1995. The administration of public tenders is closely watched in the Czech Republic, as it is in other countries, because a large portion of public funds is expended that way and the public has an understandable interest in seeing this money spent effectively and economically. The Office for the Protection of Competition's objective is to achieve, mainly through its decision-making activities, a free and open competition between the suppliers, along with a selection of the best proposal in a transparent manner devoid of any discrimination. The ultimate goal

is the preservation of public funds. The parties should treat the individual tenders responsibly and suppress especially the cases that circumvent the public procurement law. That refers particularly to those situations where, by intent or by negligence, an agency may award a contract amounting to many millions of CZK directly to a specific firm without taking advantage of competitive bidding in a competitive climate. It is the obligation of the contracting authority to provide the basic elements of competitive bidding, those being transparency of the selection process and equitable, non-discriminatory treatment of the individual bidders. If the Office for the Protection of Competition detects a breach of the law, it may opt for what is called remedial measures, such as reinstating the unjustly excluded bidder to the process, or cancelling the entire tender. Should the contract be completed by the time the Office for the Protection of Competition finds indications that the law had been broken, it cannot impose remedial measures, only penalties. A separate category related to public procurement, as well as competition in general, are cartel agreements between the bidders. The bidders may, for example, agree which of them will submit the lowest bid and be assured of winning, only to switch places on the next tender. However, since both bids are overpriced to some extent, the purchaser ends up paying much more for the contract than if the winner had been picked in a fair contest from fully competitive bids.

## **II. Information requested from States, parties and signatories in relation to measures to prevent money-laundering (art. 14)**

### **1. Measures/steps taken to implement this provision of the Convention**

- Anti-money laundering/combating financing of terrorism (AML/CFT) in the Czech Republic is primarily regulated by the **Act No. 253/2008 Coll., on Selected Measures against Legitimation of Proceeds of Crime and Financing of Terrorism (the AML Act)**. This Act implemented the 3<sup>th</sup> EU Anti Money Laundering Directive and other related EU Regulations and Directives into the Czech national law. Currently are being finalized linguistic details and legal wordings on the 4<sup>th</sup> EU Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (AMLD) and a new Regulation of the European Parliament and the Council on information accompanying transfers of funds (AMLR). The new AMLD responds to the constant developments in the fight against the money laundering and terrorist financing and to the necessity to harmonize EU legal framework with the international standards adopted by the Financial Action Task Force in 2012. The proposal of the 4<sup>th</sup> AMLD contains several conceptual changes, e.g. extending of the scope of the Directive (partly into gambling services) and decreasing of the threshold limit for cash transactions from 15.000 EUR to 10.000 EUR. Among other changes there is also a new system of the Risk Assessment (including the national RA), new measures regarding the beneficial owner information, etc. There will be a two years transposition period of the 4<sup>th</sup> AMLD

to the domestic legislation. The **Financial Analytical Unit of the Ministry of Finance (FAU)** has already started with preparations and proposals on amendments to the AML act accordingly. Monitoring of AML issues is under the overall control of the Ministry of Finance – namely FAU, the Czech national Bank and secondary also the Ministry of the Interior (as a law-enforcement part of the system).

- The FAU established **Supervision Division**, which closely cooperates with the Supervision Department of the Czech National Bank, which covers supervision on banks, credit unions, pension funds, investment funds, insurance companies and all capital market entities. In the framework of this cooperation, inspectors pay their attention to the targeted controls of reporting entities, where insufficient compliance with the AML/CFT Act is expected. The obliged entities as subjects to the Czech AML legislation, including persons acting (within their business capacity) as trustees of trusts, are obliged to keep records of all data and documents on all transactions within a business relationship (including transactions between a trustee and a settlor or beneficiary) for at least 10 years. The same obligation applies in case of occasional transactions exceeding EUR 1.000. The scope of records to be kept is very broad and comprises all data and written documents about the transactions. Failing to comply with these requirements can be sanctioned with a fine up to CZK 10.000.000 (EUR 400.000).
- The FAU has always focused on strengthening international cooperation and information exchange and tries (in the framework of the Egmont Group, Moneyval CoE, EU structures, OECD, etc.) to enforce the rule of the approach to foreign requests at the same manner as to domestic cases in the framework of analysis of STRs.
- The Financial Analytical Unit issued a **methodical guide** considering the new legislation effective from 2014. This guide includes the detailed instruction for obliged entities how to identify the beneficial owner of the client and it also covers procedures how to detect and identify the silent partners, in case that the influence of the silent partner achieves the influence of the beneficial owner. The methodological guide has been published on FAU websites. It also stipulates an obligation to trace the beneficial owner to the specific natural person according to amended FATF Recommendations. If there is no beneficial owner on the basis of the share or other influence on client's activity existing, it is an obligation to identify the natural person performing the highest control function at client's company. Anonymous transactions are forbidden in case of business relationships like for example - an agreement to establish an account, an agreement to use a safety deposit box or an agreement to make various forms of deposit. The customer identification is always performed based on the official identity card issued by the appropriate state authority only. In such cases the customer due diligence is being performed on the beginning of the business relationship as well as risk profile assessment. That is done regardless of any limits of customers transactions. The recommendation to observe the principles of performing the identification, in accordance with "Statement of Principles on Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering of the Basel Committee in February 2003", has been generally issued

for banks and for financial institutions. The competent employees of credit and financial institutions are trained in recognition of fake documents. Anonymous businesses are, according to the AML Act and other legislation, prohibited in one-off businesses for 1.000 EUR or more. The exceptions are permitted only in accordance to the simplified customer due diligence by the original FATF Recommendations and only for life insurance and electronic money to the set limits. An obligation regarding summation of related transactions which is used for one-off businesses is set in Section 54, para. 3 of the AML Act. A lot of obliged entities, especially credit and financial institutions, exercise the identification of client under this obligation also for lower limits or even absolutely regardless of any limit.

- The **Czech Customs Administration** has responsibility and power to collect cash declarations and carry out cash controls. When customs find out within their controls that the obligation to declare the cash has not been fulfilled by a traveler, the cash can be detained and the customs open administrative proceedings and can impose a penalty (Section 50 of the AML Act).

The customs have an obligation to collect all relevant information regarding the origin of cash during the opened administrative proceedings as well as other important information for possible future investigation.

The collected information is sent to the FAU. The FAU in the case of suspicion of money laundering or financing of terrorism continues with its own analyses.

In case the FAU has got relevant evidence on committing ML/FT crime then it is necessary to file a criminal complaint to the LEAs. The LEAs consequently open their criminal investigation in the matter.

- **FAU – statistics**

	2011	2012	2013	2014
STRs in total	1970	2191	2721	3192
STRs in „24h“ regime	181	243	278	433
Complaints to LEA submitted by FAU in total	256	429	547	680
Complaints to LEA submitted by FAU in „24h“ regime	96	164	177	263
Funds frozen by FAU [million. CZK]	808,12	536,77	2435,00	1264,00
Funds frozen by FAU (for tax administration) [million CZK]		469,00	568,60	645,00
Funds frozen by FAU in total [mil. CZK]		1005,77	3003,60	2,182,00

Notifications sent to the tax administration by FAU	680	852	1162	1491
Notifications sent to customs by FAU	67	29	42	57
Notifications on transfers of funds from/to Iran	156	174	117	219
Number of applications for permit for transfers of funds from/to Iran	164	144	95	57
Number of proceedings in relation to breaching international sanctions	8	33	23	4
Number of fines imposed for breaching international sanctions	4	24	22	2
Amount of fines imposed for breaching international sanctions [million CZK]	0,035	0,157	0,133	0,08
Requests sent to abroad	191	191	195	260
Requests received from abroad	123	130	195	200
Spontaneous information received from abroad	140	107	117	149
Spontaneous information sent to abroad	122	83	103	154
Number of inspections executed by FAU	8	7	14	27
Number of proceedings in relation to breaching of AML/CFT Act.	3	13	19	18
Number of fines for breaching of AML/CFT Act	3	10	17	18
Amount of fines imposed for breaching of AML/CFT Act [million CZK]	1,15	0,63	3,0011	1,815

- Also, the **Penal Code (Act No. 40/2009, Coll.)** stipulates several related **criminal offences**: Section 216 – Money Laundering, Section 217 - Money Laundering out of Negligence, Division 3 of Chapter VI Sections 248 - 267 – Criminal Offences against the Mandatory Rules of the Market Economy and the Circulation of Goods in Relations with Foreign States, and Division 3 of Chapter X Corruption Sections 331 – 334 (Accepting Bribes, Bribery, Indirect Corruption) (see the English version of the Penal Code on [http://knihy.abz.cz/imgs/teaser\\_pdf/4449788073576745.pdf](http://knihy.abz.cz/imgs/teaser_pdf/4449788073576745.pdf)).

- For some of the offences listed above (Sections 216, 217, 254, 256 – 260, 331 - 333), criminal liability of legal entities is established according to the **Act No. 418/2011, Coll.**, as of 27 October 2001 **on Corporate Criminal Liability and Related Proceedings** which came into effect as of 1 January 2012.

## **2. Actions required to strengthen or to improve the measures described above**

- Within the process of recodification of the AML Act the FAU also submits **a proposal of changing the FAU into an independent office within the Ministry of Finance and a requirement to strengthen its manpower**. The requirement is based on a significant increase in activities of the FAU in the last period of time. In the analytical activities it is especially annual growth of number of suspicious transactions reports. In connection with the development of the international sanctions the FAU has faced a fast increase in administrative proceedings, particularly in the context of measures against Iran and in connection with the development in Ukraine. The FAU has also begun to exercise other activities in relation to sharing of assets in the context of international legal assistance, which is largely built on instruments of international law in the area of combating the legalization of proceeds from crime. In addition, the FAU is (even according to the Moneyval evaluation from 2011 and subsequent evaluations of elimination of deficiencies) still criticized for inadequate control of the entire spectrum of the obligated entities. Therefore, the increase in the FAU staff should be at least by 20 per cent (as a minimum variant) - but ideally 50 per cent. Costs associated with the creation of an independent office within the Ministry of Finance would be associated primarily with the creation of additional posts in various departments and costs arising from providing material and technical equipment for these officers. These costs are estimated to amount 10 - 24 million CZK.
- One of the areas where the Police of the Czech Republic would like to enhance its activity is the area of **international cooperation**. The Police of the Czech Republic would like to effectively use variety of international tools and networks in ML investigations, which have in many cases supranational character.

## **3. Technical assistance**

- The FAU recently received technical assistance from FIU.NET Bureau and became part of the FIU.NET network.

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**Supplement**

With respect to the duty to transpose the new European Union Directives on public procurement it has been decided that a new Act on Public Procurement will be adopted in the Czech Republic. The draft of the new Act on Public Procurement has already entered into remarking process and now the remarks are settled.

The Act on Public Procurement is built on the principles of transparency, equal treatment and non-discrimination. In the new regulation the principle of proportionality will be added (along with the principle that the Contracting authority is obliged to obey the Act on public procurement). This regulative will strengthen the protection of competition which is one of the most important pillars of the anti-corruption policy. For example it is not allowed to set the procurement conditions in a way to provide certain economic operators unreasonably directly or indirectly with a competitive advantage and it is also forbidden to create unjustified obstructions for the competition. The importance of proper competition is highlighted at multiple locations simultaneously in the new regulation. High standard of publication adapted in the new regulation makes the award procedure transparent.

The draft of the new Act on internal management and control in the public administration (which is in competence of the Ministry of Justice) should ensure to reduce the corruption risks and strengthen the responsibility in the public administration. Anticorruption benefits of this new regulation can be expected in elimination of the duplicity ex-post controls, strengthening of the manager's responsibility, improving of the control of the financial management, improving of the internal audit, ensuring of the independence of the internal audit and mainly also fixing of the rules for the prevention of the conflict of interest in the field of public finance treatment. From the new regulation it will be obvious which body is competent to decide in a certain matter.